



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 708

IN THE MATTER
OF
WALTER R. MCGRATH

DISPOSITION AGREEMENT

The State Ethics Commission and Walter R. McGrath enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 18, 2002, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by McGrath. The Commission has concluded its inquiry and, on February 19, 2004, found reasonable cause to believe that McGrath violated G.L. c. 268A.

The Commission and McGrath now agree to the following findings of fact and conclusions of law.

Facts

At all times relevant, McGrath was the General Manager at Braintree Electric Light Department (BELD). As such, McGrath was a municipal employee within the meaning of G.L. c. 268A.

1. Under G.L. 164, § 56, McGrath, as BELD's General Manager, had full charge of the operation and management of the plant. As such, he had ultimate authority over BELD's employment and retention of consultants.
2. Power Line Models (PLM) is a corporation that provides consulting, design and engineering services to the electric power industry. PLM had a variety of BELD projects on which it was working in 1999 and 2000. In 1999 PLM billed BELD \$61,000 for work performed, and in 2000 PLM billed BELD \$104,000.
3. McGrath and two of PLM's principals have been friends since they met 30 years ago as employees of New England Electric Systems. Over the course of their

30-year friendships, McGrath has sometimes hosted these friends at golf outings, dinner, and sporting events.

4. In 1999, McGrath was invited by one of these friends at PLM to attend Major League Baseball's All-Star Game, played that year at Fenway Park. The ticket had a face value of \$150, and was paid for by PLM.

5. In August and October 2000, one of McGrath's friends at PLM invited him to play golf with PLM employees. The per person costs for these outings were \$96 and \$82, respectively. The friend was reimbursed by PLM for the cost of the outings.

6. During 1999 and 2000, McGrath on occasion acted officially on matters of interest to PLM.

Conclusions of Law

McGrath's failure to disclose his friendships with PLM principals and entertainment provided by those principals at PLM expense

7. Section 23(b)(3) of G.L. c. 268A prohibits a public employee from, knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion. The appointing authority must maintain that written disclosure as a public record.

8. By on occasion taking official actions of interest to PLM when he was a long-time friend of two of its principals, McGrath knew or had reason to know that he was acting in a manner that would cause a reasonable person knowing all of the facts to conclude that PLM could unduly enjoy his favor in the performance of his official duties. These appearance concerns are exacerbated by McGrath's receipt of a ticket, paid for by PLM, to the Major League Baseball All-Star game in 1999, and PLM's payment for two rounds of golf for McGrath in 2000. McGrath made no disclosure to his appointing authority of his friendships with these two PLM principals, or his acceptance of this entertainment. Thus, McGrath violated § 23(b)(3).¹

9. The law's provision for advance written disclosure to dispel the appearance of a conflict of interest is not a technical requirement. It causes the public employee to pause and reflect upon the appearance issue and decide whether to abstain or, notwithstanding the appearance issue, to participate after

making a timely written disclosure. Importantly, if the public employee chooses to participate, the written notice gives the appointing authority the opportunity to consider the appearance issues raised and to take appropriate action.

Resolution

In view of the foregoing violations of G.L. c. 268A by McGrath, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by McGrath:

- (1) that McGrath pay to the Commission the sum of \$2,000² as a civil penalty for violating G.L. c. 268A, § 23(b)(3); and
- (2) that McGrath waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 17, 2004

¹ McGrath's acceptance of entertainment also raises issues under §§ 3 and 23(b)(2) of the conflict-of-interest law. Section 3 bars a public employee from receiving gifts for or because of official acts or acts within the employee's official responsibility performed or to be performed by the public employee. A § 3 violation requires proof of a nexus between the gift and the official act. In this case there is insufficient evidence of any such nexus between any gift and any official act performed or to be performed by McGrath to warrant further proceedings. Section 23(b)(2) bars public employees from using their official position to secure for themselves unwarranted privileges or exemptions of substantial value unavailable to similarly situated individuals. In view of the evidence of McGrath's 30-year friendship with the two PLM principals and the reciprocal exchange of gifts between McGrath and these individuals, there is also insufficient evidence that the gifts were given to McGrath because of his position to warrant further proceedings. The Commission is troubled that the gifts were treated as business expenses for PLM. While this fact may not in all cases be determinative, it will be carefully scrutinized whenever professional activities and business expenses become interwoven with private entertainment, even if arguably under the guise of good will or friendship, because it erodes the public's confidence in government. For this reason, the Commission recently promulgated two Commission Advisories, 04-01 and 04-02, which advise public employees not to accept anything of value when offered by friends with whom they also conduct business unless they first contact the Commission.

² In setting the amount of the civil penalty in this case, the Commission considered, among many factors, (i) McGrath's long-standing friendships with PLM principals, (ii) the number of occasions and value of the entertainment PLM provided to McGrath, (iii) McGrath's status as BELD's General Manager, a position from which he set the tone for the organization, and (iv) administrative action taken by BELD adverse to McGrath.